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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Mark et al. DOCKET NO.: 112701-009
SERIAL NO.: 09/025,363 ART UNIT: 1616
DATE FILED: February 18, 1998 EXAMINER: S. Sharareh
INVENTION: "CALORICALLY DENSE NUTRITIONAL COMPOSITION"

Assistant Commissioner for Patents

Washington, D.C. 20231

RESPONSE

Sir:

Please enter the following Response in the above-identified patent application.

REMARKS

This Response is submitted in response to the Office Action mailed on June 6, 2000. The Office Action rejects Claims 1, 2, 4-5, and 7-22 under 35 U.S.C. §'s 102 or 103. Applicants respectfully submit, for the reasons set forth below, that the rejections are improper as a matter of Patent Office procedure, law, and fact. Moreover, the Office Action in and of itself is internally inconsistent. Accordingly, Applicants respectfully request that the rejections be withdrawn.

At the outset, Applicants note that the majority of the pending claims have been rejected as being anticipated by two separate references and then later as being obvious in view of these same references in combination with other references. Alternative rejections of this sort are not proper under current Patent Office procedure, § 706 of the MPEP. Pursuant to the MPEP, Patent Examiners are cautioned to use the best available art and to apply the best rejections. See § 706, MPEP. Applicants respectfully submit the Patent Office has not done this. For example, if the